

**ORDER NO. 45**

**CASE NO. 115/08/WSH**

**IN THE MATTER OF: *THE WORKPLACE SAFETY AND HEALTH ACT***

**- and -**

**IN THE MATTER OF: An Appeal by**

**THE CITY OF WINNIPEG,**

**Appellant,**

**- and -**

**Director, Workplace Safety and Health,**

**Respondent.**

**BEFORE: W.D. Hamilton, Chairperson**

**M.D. Steele, Board Member**

**L.L. Baturin, Board Member**

**SUBSTANTIVE ORDER**

**WHEREAS:**

1. On October 25, 2007, a Safety and Health Officer (the "Officer") of the Workplace Safety and Health Division (the "Division") issued an Improvement Order, pursuant to Sections 4(1), 4(2), 5, 6, 7 and 26(1) of *The Workplace Safety and Health Act* (the "Act") and the *Workplace Safety and Health Regulation (Regulation 217/2006)* (the "Regulation") to the Appellant, The City of Winnipeg (the "City") in respect of activities in progress at a construction project located at Leila Avenue and Pipeline Road in the City of Winnipeg (the "Leila Order") [Ex. 1]. The work being performed at the Leila Avenue construction site was concrete finishing. The substantive portion of the Leila Order reads as follows:

On 24 & 25 October 2007, the undersigned officer, pursuant to Section 24(1) of The Workplace Safety and Health Act W210 attended the above noted worksite location. Pursuant to The Workplace Safety and Health Act W210 subsections, 4(1), 4(2), 5, 6, 7, 26(1) and Manitoba Regulation 217/2006 or Manitoba Regulation 228/094, the following improvement order is issued:

The employer must consult with the safety and health committee, the safety and health representative, or where there is no committee or representative, the workers at the workplace regarding compliance with the requirements of the Workplace Safety and Health Act W210 and/or M.R. 217/2006/M.R. 228/94.

1. Personal Protective Equipment - Headwear Construction Project W210 4(2); The Workplace Safety and Health Regulation 6.10 - 6.11

Activities or equipment at a construction project site pose a risk of injury to a worker's head. Although headwear protection (hard hats) were available to workers this date, they were not being worn.

In 2007 numerous head injuries in construction project sites occurred due to side and over head impact from equipment and materials. Construction project sites as defined by the Act (see Safe Work Bulletin #199 provided this date)

Workers are at risk of injury when they are not wearing personal protective equipment appropriate to the hazard(s) present.

Employer/worker are required with protective headwear that meets the requirements of the standards below.

#### Additional Information

The employer must also provide if necessary,

- (a) a line for the headwear if necessary in cold conditions; and
- (b) a retention system to secure the headwear firmly to the worker's head if conditions may cause the headwear to dislodge.

The protective headwear that a worker provides for himself or herself must

- (a) be appropriate to the risk; and
- (b) meet the requirements of CSA Standard Z94.1-05, Industrial Protective Headwear - Performance, Selection, Care and Use or ANSI Z89.1 - 2003, American National Standard for Industrial Head Protection.

#### Reference Documents

Standard Information Sheet - CSA Standard Z94.1-05, Industrial Protective Headwear - Performance, Selection, Care and Use  
Standard Information Sheet - ANSI Z89.1 - 2003, American National Standard for Industrial Head Protection  
Safe Work Bulletin - 199 (provided this date)

2. On October 25, 2007, an Officer of the Division issued an Improvement Order pursuant Sections 4(1), 4(2), 5, 6, 7 and 26(1) of the *Act* and the *Regulation* to the City in respect of activities then in progress on a construction project located on the Charleswood Parkway in the City of Winnipeg (the "Charleswood Order") [Ex. 2]. The work crew employed by the City was engaged in repairing cracks on the Parkway by spreading hot asphalt material with a hand wand and none of the workers were wearing protective head gear and no protective head gear was immediately available at the Charleswood site. Aside from the identification of the construction site, the substantive portion of the Charleswood Order was identical to the substantive portion of the Leila Order, *supra*.
3. It was made known to the City that the two Orders required the workers on these sites to wear protective head wear (hard hats) on a mandatory basis.
4. The City complied with the Leila Order and the Charleswood Order. In this regard, the City sent a written notice to the Division on November 1, 2007 [Ex. 15], as follows:

To Workplace Safety and Health: Re Improvement Orders

The Public Works Safety Branch has sent out a notice to the Streets Maintenance Division: staff involved in specific activities to comply with the improvement orders issued October 25<sup>th</sup>, 2007.

**"Requiring staff performing or involved in concrete repair and joint sealing activities to wear hard hats until further notice"**

The City of Winnipeg will be appealing these orders under the Workplace Safety and Health Act.

5. On November 8, 2007, the City, pursuant to Section 37(2) of the *Act*, appealed the Leila and Charleswood Orders to the Director of the Division (the "Director") on a number of grounds [Ex. 3] including the following:
  - a. The two Orders did not provide any specific direction for compliance.
  - b. The City was not in contravention of any part of the *Act* or the *Regulation* respecting protective head gear in that, in both cases, the City had conducted a risk assessment of the tasks involved, in consultation with the workplace safety and health committee, and had identified tasks where hard hats are required and had also identified those tasks which were exempted from this requirement. The City asserted that the activities covered by the two Orders were identified as exceptions to the City's written hard hat policy [Ex. 6 - Tab 11].

- c. Section 6.11 of the *Regulation* does not state that protective head wear is mandatory on a construction site but only states that protective head wear must "... be appropriate for the risk," and pursuant to the City's own risk assessment process, no risks were identified for the work in question and, further, the Leila and Charleswood Orders did not identify any specific hazard at the time of the inspection.
- d. The Division cannot issue an Improvement Order based on the contents of a Bulletin (in this case Bulletin No. 199 issued in February of 2007 - Ex. 11) and which provides, in part, as follows:

**Due to these risks protective headwear is required at all times on construction project sites.**

The City asserted that the guidance provided in the Bulletin is inconsistent with the directions in the *Regulation*.

- e. The Division was enforcing its own internal policy as if that policy was part of the *Regulation*.
6. On March 17, 2008, the Director dismissed the appeal of the City and affirmed the Leila and the Charleswood Orders [Ex.4]. In his reasons dismissing the appeal, the Director made, *inter alia*, the following findings:

... it is our position that any reasonable risk assessment of a construction site would conclude that a hard hat is necessary to protect workers. ...

As to the City's position on Section 6.11 of the *Regulation*, the Director stated:

... You are correct that this section does not expressly state that protective headwear is mandatory at a construction project site. However, it is our position that a hard hat is the only possible headwear that would be appropriate for the risks faced at a construction project site.

Construction project sites present three potential risks to a worker's head. First, there is the possibility of a lateral impact. Second, there is the possibility of an impact from above. Lastly, there is the possibility of electrical contact. ...

To adequately protect a worker's head at a construction project site, the only possible headwear that would be appropriate for the risk would be a hard hat. The role of the worker and employer, then, is to assess whether a

standard hard hat with top impact protection only is sufficient to address the risk at the particular construction project site, or whether a hard hat with protection against electrical contact is required to address the risk. ...

As to Bulletin 199, the Director stated:

... You are correct that a Bulletin in and of itself cannot be used as the basis for an improvement order. A Bulletin clarifies and provides guidance on various workplace safety and health matters, including provisions of the Act and the Regulation.

Bulletin 199 is intended to clarify the position of Workplace Safety and Health (WSH) with respect to hard hats at construction project sites. It is intended to give guidance to workers and employers relating to the use of appropriate hard hats at construction project sites. Employers must then decide whether to use a standard hard hat with top impact protection, a hard hat with lateral impact protection and/or a hard hat with protection against electrical contact. ...

WSH policy is to require hard hats at construction project sites. This policy is based on section 6.11 of the Regulation and reflected in Bulletin 199. Given the risks commonly found on construction project sites, it is our position that hard hats must be worn on all construction project sites in order to address the safety risks. (*sic*) note that the Construction Safety Association of Manitoba endorses this requirement to wear hard hats at a construction project site.

7. On March 31, 2008, the City, pursuant to Section 39(1) of the *Act*, appealed the decision of the Director to the Manitoba Labour Board (the "Board") [Ex. 5] and sought an order of the Board rescinding or setting aside the Leila and Charleswood Orders. In its appeal, the City asserts, as follows:

... No jurisdiction/authority under the Act or the Regulations to issue the Improvement Orders in question. Alternatively, the Orders are contrary to the evidence and are not reasonable in the circumstances. ...

8. Section 39(6) empowers the Board, after the hearing of an appeal, to make an order, "... confirming, varying or setting aside the order or decision appealed from." The Board is also empowered to award any relief mentioned in Section 31(4) of *The Labour Relations Act*.

9. On September 16 and 17, 2008, and on March 11 and 12, 2009, the Board conducted a hearing, at which time the parties appeared before the Board and presented evidence and argument, both parties being represented by counsel.
10. Before setting out a number of salient principles or material facts that govern the disposition of this appeal, it is useful, from a contextual perspective, to recite certain material facts and summarize the relevant provisions of the *Act* and *Regulation*. In this regard:
  - a. The evidence establishes that the Leila and Charleswood Orders are the standard form general orders that are issued by the Division in respect of any determination made by an Officer that hard hats are required on a construction site.
  - b. Both the Leila and Charleswood work sites were "construction projects" within the meaning of Section 1 of the *Act*, which defines a "construction project" to mean:

**Definitions**

**1** In this Act, unless otherwise specified, ...

**"construction project"** means

- (a) the construction, demolition, repair, alteration or removal of a structure, building, complex, street, road, highway, pipeline, sewage system or electrical telecommunication or transmission line,
- (b) the digging of, working in or filling a trench or excavation,
- (c) the installation, modification, repair or removal of any equipment or machinery, or
- (d) any work prescribed by regulation as a construction project;  
...

(Emphasis added by the Board.)

- c. At the Leila site, the Officer, on the day in question, observed nine workers engaged in concrete and slab pouring activities and that only one employee, namely, the worker in charge of the chute attached to the concrete mixer/truck, was wearing a hard hat. It is not in dispute that hard hats for all employees were immediately available on the site itself. As to the Charleswood work site where joint sealing was

being performed, the Officer observed that none of the nine employees on the work crew were wearing protective head gear (hard hats) and, further, that no hard hats were available on the site on that day.

- d. Part 6 of the *Regulation* addresses those circumstances where "personal protective equipment" is required to be furnished either by an employer and/or employees. The specific provisions relevant to this appeal are Sections 6.11(1) and 6.11(2) of the *Regulation*, which state as follows:

**Protective headwear - worker's responsibilities**

**6.11(1)** A worker at a construction project site is responsible for providing

- (a) his or her own protective headwear; and
- (b) if necessary,
  - (i) a liner for the headwear to protect the worker from cold conditions, and
  - (ii) a retention system to secure the headwear firmly to the worker's head, where the worker works in conditions that may cause the headwear to dislodge.

**6.11(2)** The protective headwear that a worker provides for himself or herself under this section must

- (a) be appropriate for the risk; and
- (b) meet the requirements of CSA Standard Z94.1-05, Industrial Protective Headwear - Performance, Selection, Care and Use or ANSI Standard Z89.1-2003, American National Standard for Industrial Head Protection, if there a risk of injury
  - (i) to the worker's head, including a significant possibility of lateral impact to the worker's head or
  - (ii) to the worker from contact with an exposed energized electrical conductor.

(Emphasis added by the Board.)

- e. While Section 6.11, *supra*, speaks of a worker's individual obligation to provide protective head wear in the circumstances defined therein, there is an overriding obligation on an employer (here, the City) to ensure that a worker wears and uses such protective equipment in the circumstances described in Section 6.11(2) of the *Regulation*. This obligation arises under other provisions in the *Act*, including Sections 4(1) and 4(2).
- f. On March 18, 1999, the City issued a "Hard Hat Policy for the Street Maintenance Division" (Ex. 6 - Tab 11) [the "City's policy"]. The City's policy was in force when the Leila and Charleswood Orders were issued. The City's policy states as follows:

... Due to the variety of work activities and locations in the Public Works Department, it is not possible to document every situation where hard hats are required. If there is any doubt or disagreement about the requirement for a hard hat, it shall be worn until the situation is resolved by management.

Violations of this policy will warrant disciplinary action in accordance with the City of Winnipeg Safety Manual.

Only CSA approved hardhats are to be worn

**ALL employees shall wear hard hats:**

- When working in the vicinity of heavy equipment such as loaders, backhoes, aerial buckets, cold planers, dump trucks, compactors, etc; (*sic*)
- When working in or around an excavation;
- When working under bridges or any area with restricted head clearance, or where work is being performed overhead;
- At any worksite where the authority having jurisdiction or control over the premises has designated the area as a Hard Hat Area;
- In all other areas designated by the Public Works Department Authorities as a Hard Hat Area.

**Exceptions:**

**The following exceptions will apply. Hard hats will not be required, BUT THEY MUST BE IMMEDIATELY AVAILABLE FOR USE WHEN:**

- Riding in or operating closed cab vehicles;

- Concrete finishers;
  - Engaged in forming, placing asphalt or saw cutting.
  - Hard Hats are not required when paper picking. ...
- g. The *Act* was amended, effective August 9, 2002. Section 7.4 was added to the *Act* and this Section requires that an employer must establish a written workplace safety and health program for each workplace where 20 or more workers of the employer are regularly employed. Section 7.4(5) of the *Act* prescribed what must be contained a workplace safety and health program, including:

**Content of program**

**7.4(5)** A workplace safety and health program must include ...

- (b) the identification of existing and potential dangers to workers at the workplace and the measures that will be taken to reduce, eliminate or control those dangers, including procedures to be followed in an emergency; ...

Section 7.4(6):

**Requirement for consultation**

**7.4(6)** The employer shall design the workplace safety and health program in consultation with

- (a) the committee for the workplace; ...

The Board agrees with the statements in the City's brief that the *Act* establishes an extensive regime under which employers are required to operate. A fundamental requirement of this regime is that an employer must conduct an assessment of the risks faced by its employees in the workplace (commonly known as a hazard assessment and/or job hazard analysis) following which safe work procedures are to be developed. Neither the *Act* nor the *Regulation* specify what must be the final outcome of these processes or assessments.

- h. The City's policy pre-dates the 2002 amendments to the *Act*. While the Board accepts that, after the Leila and Charleswood Orders were issued, the City undertook a job inventory and job safety analysis, as contemplated by the *Act*, for most of its multifarious work functions, including cement finishing and tar sealing, this process is ongoing as to the type of activities covered by the Leila and Charleswood Orders. As of the date of the hearing, the City had developed a draft job hazard analysis and a draft safe work procedure for concrete pouring and joint sealing [Tabs 6 - 9 of Ex. 6].

- i. It is admitted that the City's policy does not constitute a "job hazard analysis" as contemplated by Section 7.4(5) of the *Act* [See (f), *supra*].
  - j. Based on the testimony given by the Officers and other witnesses for the Director, the Director submitted that it is enough to satisfy the requirement of the *Act* and the *Regulation* that there be a "foreseeable risk" of hazards and/or injuries. If a risk reflects a potential for injury rather than a firm finding that there are "demonstrable" or "imminent" risks at a work site, then the requirements of the *Act* are met. For its part, the City referred to the obligation(s) cast on employers by the *Act* that steps must be undertaken by the City to fulfill its obligations, "... so far as is reasonably practicable ..." [See Sections 4(1) and 4(2) of the *Act*] and, in respect of protective headgear, any requirements established under a workplace safety and health program must meet the test of "... appropriate for the risk" or that there must be a "... significant possibility of lateral impact to the worker's head." The City's asserts that the City's policy, *supra*, meets these tests.
  - k. Given the scheme established by Section 4 of the *Act*, the City asserts that determining the "... appropriateness of the risk [Section 6.11(2)] is meant to be done by the employer (i.e. the City) in the manner prescribed in the legislation." The City also asserts that the Officers, by issuing the two Orders, in essence removed the word "significant" from Section 6.11(2) of the *Regulation*.
11. The Board, following consideration of material filed, evidence and argument presented, has determined that a number of principles and/or material facts govern the disposition of the City's appeal, as follows:
- a. The City's appeal is from the Director's decision [Para. 7, *supra*] and it is the Director's decision that forms the focus of the Board's inquiry.
  - b. While the Board has the power to "vary" the Director's decision pursuant to Section 39(6) of the *Act*, the Board can only vary an order or decision that has been validly issued under the *Act* or the *Regulation*. Here, the Board is obliged, in the first instance, to address the City's core argument that there was no lawful authority or jurisdiction under either the *Act* or the *Regulation* to issue the Leila and Charleswood Orders.
  - c. While the Board accepts that any decision it issues in respect of this appeal may well assist these and other parties in a general sense, the Board must confine its findings to the factual circumstances relating to the tasks associated with the Leila and Charleswood projects as it is only the Leila and Charleswood Orders that are subject to appeal.

- d. The Board's decision in this appeal cannot be a blanket affirmation of the Bulletin's requirement that "... protective headgear is required at all times on construction project sites," as there is no factual or evidentiary foundation to make such a ruling. The tests referred to in the *Act* ("... insofar as it is reasonably practicable ...") and Section 6.11(2) of the *Regulation* ("... appropriate to the risk"), do not, on their plain wording, establish a mandatory or "zero tolerance" test applicable to all circumstances. This wording contemplates that a judgment will have to be made in the factual circumstances of the construction activity under review by an Officer, the Director or by this Board. The Bulletin purports to cover "all construction sites" and Section 1 of the *Act* [Para. 11, *supra*] defines a construction project in broad terms. It would include many tasks related to the construction, alteration or repair of a structure or building, both exterior and interior, where the risks and any requirement established by the Division would have to be assessed against the tests outlined in the *Act*.
- e. While there is no express provision in either the *Act* or the *Regulation* which makes the wearing of hard hats mandatory on construction sites, this does not prevent an Officer from issuing an Improvement Order, pursuant to Section 26(1) of the *Act*, based on his/her opinion that the risks associated with a particular (construction) activity dictates that the wearing of hard hats should be mandatory. It is a question of assessing the risks in the factual circumstances prevailing on a reasonable basis.
- f. The Director was correct in ruling that Bulletin 199, in and of itself, cannot be the basis for an Improvement Order and, if the Board finds that Bulletin 199 was the sole basis for the Leila and Charleswood Orders, without regard to legislative authority in either the *Act* or the *Regulation*, then the two Orders must be set aside. Nevertheless, at the same time, the Board accepts that the Division is entitled to issue information bulletins in order to clarify and provide guidance to all parties bound by the *Act* regarding workplace safety and health practices.
- g. While it may be the Division's policy to require that hard hats be worn on all construction sites, as reflected in Bulletin 199, this "policy" is not binding on the Board when deciding an appeal and, on any appeal, the Board must be satisfied that the *Act* and *Regulation* provides a proper foundation for the Improvement Order under appeal.
- h. The Board's task is to determine whether the Leila and Charleswood Orders were based on a reasonable assessment of the risks inherent in the tasks actually being performed at the Leila and Charleswood sites and that the two Orders mandating the wearing of hard hats meet the tests of "reasonable practicability" and "appropriate to the risk," and, in the case of lateral protection, were designed to prevent "the significant possibility" of a risk.

- i. When deciding whether the *Act* and/or the *Regulation* provide an appropriate legislative underpinning for an Improvement Order, the Board must have regard to the broad purposes of the *Act* in order to give the *Act* and the *Regulation* a fair, large and liberal interpretation which best ensures the attainment of its objects [Section 6 of *The Interpretation Act*]. The purpose of the *Act* is to promote and maintain safety in the workplace and to ensure steps are put into place to prevent injuries to workers.
  
- j. When interpreting the *Act*, the Board must have regard to the directive of the Supreme Court of Canada in *R. v. Gladue*, [1999] S.C.J. No. 19, at page 8, as follows:

... As this Court has frequently stated, the proper construction of a statutory provision flows from reading the words of the provision in their grammatical and ordinary sense and their entire context, harmoniously with the scheme of the statute as a whole, the purpose of the statute, and the intention of Parliament. The purpose of the statute and the intention of Parliament, in particular, are to be determined on the basis of intrinsic and admissible extrinsic sources regarding the Act's legislative history and the context of its enactment ...
  
- k. When assessing risks on any worksite, it is acceptable for an Officer and the Director (on appeal) to adopt a preventative and futuristic perspective and assess the potential risks from the point of view of whether a risk of injury is reasonably foreseeable. Under the broad mandate of the *Act*, it is not improper to assess "potential" as opposed to actual, immediate or imminent risks. The *Act* speaks not only of existing risks but it also is designed to prevent "potential" injuries or dangers in a workplace.
  
- l. The test of reasonable foreseeability, in the context of a risk being a potential risk or a possible risk, is consistent with the test of "reasonable practicability" in the *Act* and *Regulation* and is consistent with assessing, in the case of protective headwear, what steps must be taken in order to reflect what measures are "appropriate to the risks." What is "appropriate" in any circumstance simply means what is "suitable or proper" in the context of foreseeable risks. Further, what may be a "significant possibility" within the meaning of Section 6.11(2) means that the possibility of the risk must reflect a risk of great importance or consequence in that it must be noteworthy or noticeable. The assessing of the reasonable foreseeability of a possible or potential risk, from a preventative perspective, is consistent with the objects and purposes of the *Act*. Ordering the implementation of a safety measure is "reasonably practicable" if the implementation of the measure is one that is capable of being put into practice or capable of being done. The City stipulated that "cost" was not being raised as a factor.

- m. To the extent that the City's appeal is based on the assertions that the Leila and Charleswood Orders contain no specific direction for compliance and that no specific hazards are identified in said Orders, the Board finds that these assertions do not affect the validity of the Orders. The *Act* contains sufficient legislative authority to issue orders in this form. The scope of any potential Improvement Order is governed by Section 33 of the *Act*, as follows:

**Remedial measures**

**33** An improvement order may, but need not, include directions as to the measures to be taken to remedy any contravention or matter to which the order relates, and those directions

- (a) may be made by reference to any approved code of practice; and
- (b) may set out different ways of remedying the contravention or matter.
- n. To the extent that the City is arguing that when it, or any employer, undertakes a risk assessment and job hazard analysis leading to the adoption of a safe work practice satisfies the requirements of the *Act* and, consequently, there is either no or only limited authority for the Division to enforce the *Act* through Improvement Orders is not a sustainable position. While there is an (acknowledged) onus placed on an employer to establish a safety and health program within the meaning of Section 7.4 of the *Act*, it does not follow that any program which may be unilaterally established by an employer, even after consultation with a safety committee, means that there is automatic compliance with the *Act*. The Division still retains the overriding authority under the *Act* to review a safety program put into place by an employer (here, the City) in order to ensure that safety program complies with the requirements of the *Act* and the *Regulation*.
- o. The Board has assessed the evidence of the Officers in respect of what they observed at the Leila and Charleswood work sites on the days the Orders were issued. The Officers were entitled to use the Bulletin as a guideline but not as the sole basis for the Leila or Charleswood Orders. The Board is satisfied that the Leila and the Charleswood Orders were based on a reasonable assessment of potential and possible risks that were reasonably foreseeable, taking into account the construction tasks that were actually being performed at the Leila and Charleswood sites, meaning that the Leila and the Charleswood Orders, requiring that mandatory headgear be worn, were Orders that were "reasonably practicable" in the factual circumstances prevailing and "appropriate for the risk" within the meaning of Section 6.11(2) of the *Regulation*.

12. The Orders under appeal were not contrary to the evidence and, in the factual circumstances prevailing at the time, were reasonable. These findings are sufficient to dispose of the alternative submission of the City.
  
13. After applying the principles and material facts outlined in Paragraphs 10 and 11, *supra*, the Board has **DETERMINED** the following:
  - a. In respect of the Director's reasons [Ex. 4 - See Para. 6, *supra*], the Board affirms the following rulings of the Director:
    - i. that Section 6.10 of the *Regulation* had no application to the Leila and Charleswood circumstances;
    - ii. that Section 6.11 does not expressly state that protective headwear is mandatory at a construction site project; and
    - iii. that the Bulletin, in of itself, cannot be used as the sole basis for an Improvement Order but it can clarify and provide guidance on workplace safety and health matters including provisions of the *Act* and the *Regulation*.
  - b. Any Improvement Order must ultimately meet the tests mandated by the *Act* and Section 6.11(2) of the *Regulation* in relation to the circumstances prevailing at the particular work site under investigation.
  - c. The Board is satisfied that the Leila and the Charleswood Orders were supported by the provisions of the *Act* and the *Regulation* and, therefore, fell within the jurisdiction of the Division. Further, the Board is satisfied that there was a reasonable factual basis to issue the Leila and Charleswood Orders.
  - d. There was legislative authority for the Director to find that the Officers did not err in issuing the Leila and Charleswood Orders and that these Orders ought to be affirmed. It follows that the appeal of the City from the Director's decision will be dismissed.
  - e. For a greater certainty, the result in this appeal only pertains to the construction activities and tasks that were being performed at the Leila Avenue and Charleswood Parkway construction sites (i.e. the concrete finishing and tar sealing tasks).

**T H E R E F O R E**

1. The Manitoba Labour Board **HEREBY DISMISSES** the appeal of The City of Winnipeg, filed on March 31, 2008, and, pursuant to Section 39(6) of the *Act*, the decision of the Director, Workplace Safety and Health, issued March 17, 2008, is **AFFIRMED**.
2. As a consequence of this finding, the Orders issued on October 25, 2007, in respect of the Leila Avenue construction site and the Charleswood Parkway construction site are **AFFIRMED**.

**DATED at WINNIPEG**, Manitoba, this 12<sup>th</sup> day of **May 2009** and signed on behalf of the Manitoba Labour Board by

**“original signed by”**

**W.D. Hamilton, Chairperson**

**“original signed by”**

**M.D. Steele, Board Member**

**“original signed by”**

**L.L. Baturin, Board Member**

WDH/dr

**REASONS FOR DECISION**

It is the policy of the Manitoba Labour Board that, where a party to the proceedings is adversely affected by an Order or by a decision of the Board, within ten (10) calendar days of the date on which the Board's Order or decision was signed, that party may request the Board in writing to furnish written reasons for its Order or decision. The Board then may consider such request for reasons for its Order or decision and shall notify the requesting party as to whether reasons will be provided.